IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1308 of 1976

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR.KADVABHAI SIDIBHAI PARMAR

Versus

GUJ AGRICULTURAL UNIVERSITY

Appearance:

1. Special Civil Application No. 1308 of 1976

PARTY-IN-PERSON for Petitioner No. 1 - Absent

MR DG CHAUHAN for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1-2

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the order of dismissal passed by the Vice Chancellor of the Gujarat Agricultural University on 11th

September, 1975. The petitioner has also challenged the appellate order by which the appeal of the petitioner against the order of dismissal was rejected.

2. Since the petitioner had challenged the validity of the statutory provisions of Section 52 of the Gujarat Agricultural University Act, 1969, and more particularly the provisions of sub-sections (1), (3) and (4) of the said Act, the petition was initially placed before the Division Bench of this High Court for consideration of the vires of the said statutory provisions. The Division Bench on 14.3.1977, passed the following order:-

> "If the constitutional question ultimately becomes necessary after going into merits, then the matter may be referred to a Larger Bench. If relief can be given on the basis of Section being valid the constitutional question would be academic. So this matter shall be accordingly put before the learned Single Judge."

3. The matter was thereafter heard before the learned Single Judge and Justice A.D. Desai, as he then was, by order dated 18/24th March, 1977 was pleased to consider all the contentions raised on behalf of the petitioner with respect to the legality of the dismissal order. As can be seen from the said order dated 18/24.3.1977, the following six grounds were raised on behalf of the petitioner for challenging the dismissal order:-

(1) That the petitioner was not allowed to participate at the inquiry by the Inquiry Committee even though he was present at the place of inquiry for the whole day.

(2) That after the inquiry was over, the report of the Inquiry Committee was not communicated or given to the petitioner so as to enable the petitioner to make an effective representation to the show cause notice issued by the Vice Chancellor.

(3) That the show cause notice dated August 8, 1973 was not served on the petitioner and therefore, he had not been given any adequate opportunity to show cause.

(4) That before the inquiry the petitioner had objected to one of the personnel of the Inquiry Committee namely, Mr. Mane, the Registrar, on the

ground that the petitioner has filed a complaint against him in a Criminal Court and therefore, Mr. Mane had a bias against the petitioner.

(5) That the Board of Management of the University while dismissing his appeal had not given any reasons for its decision and, therefore, the said decision in appeal was illegal and invalid.

(6) That on the facts and circumstances of this case the petitioner continued to be a Government servant and, therefore, the Vice Chancellor of the Board of Management had no authority to initiate the inquiry or to tell the inquiry or to hear the appeal or to inflict punishment and the State Government erred in dismissing the appeal filed by the petitioner."

Upon perusal of the said order dated 18/24.3.1977, it is clear that all the above grounds raised by the petitioner were dealt with and rejected by the learned Single Judge. Since the learned Single Judge was of the opinion that none of the grounds raised by the petitioner are required to be accepted, the learned Single Judge was pleased to observe that the questions relating to the constitutionality of the provisions of Section 52 of the Gujarat Agricultural University Act cannot be decided by the learned Single Judge of the High Court and therefore, pursuant to the observations made in the order as noted above and in view of the provisions of Article 228-A of the Constitution, the matter was referred to a Larger Bench for decision on the constitutionality of the provisions of Section 52 of the said Act.

4. From the record it is clear that thereafter the matter was placed before the Division Bench and the Division Bench comprising of Hon'ble the Acting Chief Justice Mr. J.N.Bhatt and Hon'ble Mr. Justice K.A Puj, by a judgement and order dated 1.5.2003, was pleased to uphold the constitutional validity of Section 52 of the Gujarat Agricultural University Act, 1969. Consequently, the petition was ordered to be placed once again before the Single Judge taking up such matters to render final decision in the matter.

5. When the matter was so placed before the learned Single Judge, by order dated 19.6.2003 the learned Single Judge of this Court recorded the submission of the petitioner party-in-person that he is having some grievance about not receiving pension after completion of

21 years of service in the State Government and therefore, he wanted to make a detailed representation to the Secretary to the Agricultural Department, State of Gujarat and also to the Gujarat Agricultural University. It was therefore provided that it was open for the petitioner to make a representation with respect to his claim for pension within a period of 15 days and as and when such a representation is received, it was directed that the Secretary, Agricultural Department and Gujarat Agricultural University should examine the grievance of the petitioner and to consider his request sympathetically and under the Rules whether he is entitled to receive pension or not and to pass appropriate orders within a period of six weeks from the date of receipt of such a representation.

6. Learned Counsel for the respondent No.1 has pointed out that Gujarat Agricultural University by communication dated 7th August, 2003, informed the petitioner that his representation was considered but since he was dismissed from service for committing gross misconduct, he is not entitled to any monetary benefit and his representation was therefore, rejected.

7. Learned AGP Mr. N.D. Gohil appearing for the respondent has also pointed out that by communication dated 6th August, 2004, the State Government has also communicated to the petitioner that his representation was considered, but since the decision was taken by the University not to accept petitioner's request, nothing further is required to be done by the State Government.

8. From the above discussion it can be seen that earlier by an order dated 18/24.3.1977, learned Single Judge of this High Court had already considered all the contentions of the petitioner regarding his challenge to the order of dismissal and had negatived each of the contentions raised by the petitioner. In that view of the matter and in view of the earlier observations of the Division Bench and considering the provisions of Article 228-A of the Constitution of India, the learned Single Judge was thereafter pleased to refer the matter to the Division Bench for consideration of the constitutional validity of the provisions of Section 52 of the Gujarat Agricultural University Act. As recorded earlier, Division Bench of this High Court by judgement dated 1.5.2003 was also pleased to uphold the constitutional validity of the above provisions of the Gujarat Agricultural University Act. In that view of the matter, all the contentions raised by the petitioner in this petition have been dealt with, decided and rejected

against the petitioner by two different Benches of this High Court. In that view of the matter, nothing further is required to be done in this petition. As noted above, the directions given by this Court on 19.6.2003 to consider and dispose of the representation of the petitioner have also been complied with by the respondents and therefore also, nothing further is required to be done in this regard.

9. In the result, I find that the petition is required to be rejected and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
*/Mohandas